



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/720,278
Applicant : Alain POIRAUD
Filed : November 25, 2003
TC/A.U. : 3617
Examiner : Ajay Vasudeva

Docket No. : 2937-115
Customer No. : 6449
Confirmation No. : 4789

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

March 13, 2005

Dear Sir:

The Applicant hereby requests a pre-appeal brief review of the final rejections to the claims in the above-identified application. This request is being filed timely along with a notice of appeal. The reasons for the request are set forth in the attached Set of Arguments For Which Review Has Been Requested.

In the event that any fees may be due with respect to this paper, such fees may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

By

Brian A. Tollefson
Attorney for Applicant
Registration No. 46,338
ROTHWELL, FIGG, ERNST & MANBECK
1425 K. Street, Suite 800
Washington, D.C. 20005
Telephone: (202) 783-6040

**SET OF ARGUMENTS FOR WHICH REVIEW
HAS BEEN REQUESTED**

Claims 1-3, 5, 9 and 11-12 remain rejected in the present application. (Office Action dated September 13, 2005 ("second Office Action").) Claim 12 was rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to meet the written description requirement. (Second Office Action at 2.) Claims 1 and 3 were rejected under 35 U.S.C. § 102(a) as being allegedly anticipated by FR 2820108. (Second Office Action at 3.) Claims 2, 5, 9, 11 and 12 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable as obvious over FR 2820108. (Second Office Action at 4.)

Review is sought for the following reasons:

- Claim 12 complies with the requirements of 35 U.S.C. § 112, first paragraph because its limitations are fully supported by the original specification; and
- Claims 1-3, 5, 9 and 11-12 are patentable because they recite subject matter not shown or suggested by FR 2820108.

I. The Rejection of Claim 12 for Failing to Meet the Written Description Requirement

The rejection of claim 12 relates to the written description requirement of the first paragraph, not enablement. In order to meet the written description requirement, the specification must merely disclose the claimed invention in such a way that one having ordinary skill in the art would understand that the applicant possessed the invention at the time of filing. MPEP § 2163. The Applicant set forth in detail where in the specification support for claim 12 can be found. (Amendment dated January 13, 2006, at 2-3.) Namely, the features of claim 12 are clearly described at pages 4-5 of the

original disclosure. As set forth in the Applicant's last response, the limitations of claim 12 are essentially *verbatim* from the disclosure in the original specification. (Amendment dated January 13, 2006, at 3.) Thus, the Applicant has met his burden with respect to the written description requirement and the rejection of claim 12 thereby should be withdrawn.

II. The Rejection of Claims 1-3, 5, 9 and 11-12 as Being Anticipated by or Obvious Over FR 28201808

FR 2820108 fails to anticipate or render obvious any of claims 1-3, 5, 9 or 11-12 because, as the weight of the evidence before the Examiner reveals, FR 2820108 fails to show or suggest an anchor having an unballasted fluke as defined by those claims.

The following evidence was presented to the Examiner:

1. The Background section of the present application expressly disclaims the ballasted anchor disclosed in FR 2820108. (Specification p. 1, lines 20-36 ("EP-B-0 840 691 discloses a marine anchor ... A ballast is provided at the tip of the anchor fluke...Thanks to the ballast at the tip of the fluke, the centre of gravity of the anchor is located near to the tip....FR-A-2 820 108 discusses an anchor with a similar shape."), p.2 lines 34-36 ("The anchor [of the present invention] is unballasted, in that there is no need to provide additional ballasting on the fluke – as in EP-B-0 840 691 or in FR-A-2 820 108. "); Amendment dated January 13, 2006 at 3; Poiraud Declaration at paras. 3A-D.)
2. FR 2820108 expressly discloses an anchor having a ballasted fluke. "The part of the [fluke] 2 included between point 6 and opening 5 forms a massive

counterpoint 8. Counterpoint 8 serves as ballast and makes it possible to place the anchor in position on its three points of support when it arrives on the seabed.... The weight of counterpoint 8 also has a tendency to generate pressure of point 6 on the seabed, which again contributes to the promoting its burial." (Figs. 1-2 and pages 5-6 of FR 2820108; Amendment dated June 11, 2005 at 15-16.)

3. The Applicant submitted an image of the anchor of FR 2820108, which also shows the ballast. (Amendment dated June 11, 2005 at 17.)
4. The Applicant submitted additional evidence in the form of a sworn declaration by the inventor, an expert in the field of art of the present invention, stating that the anchor of FR 2820108 is in fact, ballasted, and that one having ordinary skill in the art would understand the disclosure of FR 2820108 to teach an anchor having a ballasted fluke. (Amendment dated January 13, 2006 at 4; Poiraud Declaration paras. 1-4.)

The evidence listed above each independently should overcome the rejection by proving that the claimed unballasted anchor is not disclosed or suggested by FR 2820108. Together, however, the weight of the evidence cannot be ignored.

The Examiner argued that the "Applicant's Specification has neither specifically defined as to what can, or cannot, be considered a ballast; nor has the applicant drawn a clear cut distinction between a "ballasted fluke" and an "unballasted fluke. Therefore, the limitation "ballast" has been broadly interpreted to mean any such weight that is provided in addition to the original weight of the fluke so as to further increase the total

weight of the fluke.” (Second Office Action at 7.) These contentions are unsupported and, as described above, have been fully rebutted by the Applicant.

Although there is no express definition of the term “ballast” in the specification, the Applicant has specifically delineated boundaries of the term ballast with the disclosure of FR 2820108. As described above, the Applicant’s own disclosure states that unballasted means “that there is no need to provide additional ballasting on the fluke – as in EP-B-0 840 691 or in FR-A-2 820 108.” Therefore, it is improper to construe the claims “unballasted fluke” to cover FR 2820108. (Specification at p.2 lines 34-36.)

Since the weight of the evidence shows that FR 2820108 fails to disclose an anchor having an unballasted fluke, which is required by claim 1, upon which claims 2-3, 5, 9 or 11-12 depend, the rejection of claims 1-3, 5, 9 or 11-12 is improper and should be withdrawn. (Amendment dated January 13, 2006.)

Further, although the Poiraud Declaration has been entered for the purposes of appeal (Advisory Action dated February 13, 2006), the Examiner did not properly consider and comment on the evidence as required by the MPEP.¹ Therefore, for this additional reason, the rejections should be withdrawn.

¹ MPEP § 716.01 requires that all entered affidavits, declarations and other evidence traversing rejections are acknowledged and commented upon by the examiner in the next succeeding action. General statements without an explanation supporting such findings are insufficient.